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6 The Honorable MARSHA J. PECHMAN
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASSIE CORDELL TRUEBLOOD, next friend
of A.B., an incapacitated person, et al.,

Plaintiffs,

v.

THE WASHINGTON STATE DEPARTMENT
OF SOCIAL AND HEALTH SERVICES, et al.,

Defendants.

NO. 2:14-cv-1178 MJP

DECLARATION OF JUDY
FITZGERALD

IN SUPPORT OF MOTION
SEEKING ADDITIONAL TIME
FOR WARD CONSTRUCTION AT
WESTERN AND EASTERN STATE
HOSPITALS

I, Judy Fitzgerald, am over the age of 18 years of age, competent to testify to the matters
below, and declare based upon personal knowledge:

1. I am Assistant Secretary for Facilities, Finance, and Analytics / Chief Financial
Officer (CFO) of the Department of Social and Health Services (Department). I am an authorized
representative of the Department of Social and Health Services.

2. As Assistant Secretary, I provide leadership in financial and facilities services
to support the mission and goals of the Department. The Assistant Secretary leads the financial
services programs, capital projects, facilities operations and maintenance, and research and
data analysis for the Department. This includes the central operating budget and accounting
services, consolidated business and maintenance services, central contract services, leased
facility and capital asset management, background checks, and administrative resources. The

1 Assistant Secretary provides independent financial management, analysis, and support to the
 2 Secretary and Executive Leadership Team, and is responsible for ensuring that the Department
 3 manages its resources in compliance with state and federal requirements. I joined the
 4 Department of Social and Health Services in 1993.

5 3. As part of my duties overseeing capital asset management, I manage the staff
 6 within the capital programs. These staff are responsible for the Department's major
 7 construction projects, including the renovation of wards at Eastern and Western State Hospitals
 8 (ESH and WSH). In that capacity, I am familiar with both construction projects. I receive
 9 regular updates about the progress and status of both projects, the challenges that arise, and I
 10 support the project staff and teams in working to overcome barriers to completion of the
 11 projects.

12 4. In June of 2019, the Department gave notice to the Executive Committee that
 13 additional time would be needed beyond the original December 31, 2019 deadline. A true and
 14 correct copy of that notice is attached as Attachment A. At that time, based on the known
 15 construction schedules, the Department projected that the projects would not be complete by
 16 December 31, 2019. At WSH, an earlier project, which was a prerequisite for the renovation
 17 of the two additional wards, took longer than expected, and the need to relocate patients
 18 delayed the earlier project. At ESH, hazardous materials were identified that required
 19 additional funding and planning, and staff relocation took longer than planned. In addition, at
 20 both ESH and WSH, all of the project bids received by the Department exceeded the available
 21 project funds, and the Department was required to develop additional funding to secure
 22 contractors for the projects. At that time, the Department projected completion of WSH wards
 23 in April, and ESH wards in June. Following that letter, the Department followed up with an
 24 updated schedule regarding construction at WSH. Based on the updated schedule, the
 25 construction at WSH would be completed later than earlier predicted, but still within the grace-
 26 period set by the contempt settlement agreement. Attached as Attachment B is a true and

1 correct copy of that communication. Following these early setbacks, renovation continued at
 2 full pace at both ESH and WSH. Construction at ESH remained on schedule.

3 5. In October of 2019, the WSH contractor located a 6-inch diameter sewer pipe
 4 that was leaking effluent as it ran into a wall and under the project. After discussing how to
 5 resolve this unexpected issue, the Department agreed to remedy the problem. However, the
 6 repair could not be completed until additional demolition work was completed to expose the
 7 sewer pipe. This pipe had been installed in 1982 and was located inside of a concrete slab.
 8 Near the end of October, sufficient work had been completed to allow an access trench to be
 9 dug to fully access the sewer pipe.

10 6. Upon further inspection, the Department learned that the sewer pipe was in
 11 poorer condition than earlier indicated, and was extremely fragile. While a complete removal
 12 and replacement of the pipe would fully resolve the issue, this solution would have resulted in
 13 a significant delay in completing the wards, and a significant increase in cost. An alternative
 14 to full replacement was sought, and a method of lining the interior of the pipe with an epoxy
 15 was identified as a way to restore the pipe to full strength with only a small loss in function.
 16 This is a specialized process, and required the Department to locate a contractor who could
 17 complete the work, and also who could perform the work during off-hours. Off-hours
 18 completion of the work was required because it was necessary to fully stop use of the pipe,
 19 which made it necessary to shut down water to a portion of the WSH campus. That part of
 20 WSH is still occupied by patients, so planning and coordination was required to ensure that
 21 patient needs remained met even when the water was shut off.

22 7. In November of 2019, a problem was also identified with a second sewer pipe
 23 that would service the renovated wards. The pipe was filled with effluent, and was not draining
 24 properly. This pipe had also been installed in 1982, and was also located the concrete slab.
 25 While the contractor initially suspected that this second issue was due to a clog that could be
 26 easily resolved, it was eventually discovered that the second pipe had been improperly

1 installed. In order to provide service to the renovated wards, the contractor was required to dig
 2 up this second sewer pipe repair the installation to ensure proper drainage. Both of these sewer
 3 pipe repairs added additional time to the project, and required the modification and delay of
 4 other construction tasks to accommodate the unexpected work.

5 8. In November of 2019, the electrical contractor informed the Department that
 6 they were having difficulty in finding required equipment to work with the large electrical
 7 panels. Because of the age and type of the electrical panels, the necessary parts were not
 8 commonly available. The contractor met with the Department, who initiated a search in their
 9 storage to try and locate usable replacement parts. When none could be located, a nationwide
 10 search began to try and locate the necessary electrical equipment. This included contacting
 11 numerous suppliers across the country. The design team even scoured eBay to see if the
 12 necessary parts could be located.

13 9. In December, it became clear that all efforts to locate replacement parts for the
 14 existing electrical equipment were exhausted. Without the necessary equipment to work the
 15 existing electrical system, the contractor was forced to redesign the electrical connections and
 16 switch gear. The redesign required the relocation of equipment and redesign of supporting
 17 systems. Once the redesign was completed, the contractor ordered the new equipment. While
 18 composed of many standardized parts, the final required product is custom, and cannot be
 19 obtained as an “off-the-shelf” item. The time required to institute this redesign, incorporate the
 20 unplanned work into the construction schedule, and obtain the necessary parts, further delayed
 21 the overall construction schedule.

22 10. The ward renovation plans and design for the WSH wards did not originally
 23 include seclusion and restraint rooms on each ward. At the time the design was completed in
 24 2015, alternative arrangements were intended for seclusion and restraint in this area of the
 25 hospital. During a walkthrough in October of 2019, the Court Monitor team expressed
 26 feedback that the project should not be completed without adding seclusion rooms on each

1 ward. This issue was discussed internally at the Department and with WSH staff, and those
 2 parties agreed that these wards should include seclusion wards in order to effectively serve the
 3 forensic population.

4 11. The Department immediately asked for the architect to draw up alternate
 5 designs to add seclusion rooms within the existing project. Because the wards are renovations
 6 of existing wards, and not new construction, the design changes had multiple impacts across
 7 the project. The change also required the repurposing of one patient bedroom on each ward to
 8 add the seclusion room. By late October, the Department approved one of the designs presented
 9 by the architect, and asked the contractor to initiate work on the change. The changes also
 10 required modifications to existing and planned structural elements, as well as infrastructure
 11 under the concrete slab. The contractor worked with each of their subcontractors to implement
 12 the design changes, and begin work on the alternate design. The time necessary to make these
 13 design changes, and implement the changes during the renovation, required additional time
 14 and impacted the overall construction timeline.

15 12. In late February and early March 2020, as the Department worked to finalize
 16 the construction schedule for WSH, accounting for the impacts of the issues discussed above,
 17 it became clear that the remaining work could not be completed within the six month period
 18 that ended on June 30, 2020. The Department quickly sent a message to Plaintiffs' counsel and
 19 the Court Monitor informing them that the Department would need to seek an extension of
 20 time from the Court. While it was difficult to predict exactly what construction conditions
 21 would be months into the future, the Department estimated that an additional four to six weeks
 22 could be required to complete the WSH renovation. As the Department began to gather
 23 materials and information to file this motion in early March, the spread of COVID-19 was
 24 taking hold in Washington. This new, unexpected challenge has created unavoidable delays to
 25 the WSH and ESH renovations.

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1 13. The COVID-19 pandemic has created unpredicted impacts on the construction
 2 at both ESH and WSH that have led to indefinite delays. Prior to the COVID-19 pandemic
 3 outbreak, ESH beds had been fully on track for completion by June 30, 2020. WSH beds were
 4 delayed as described above, but were only behind schedule by approximately four to six weeks.
 5 The arrival of this unprecedeted and historic pandemic in the United States unavoidably
 6 impacted the ongoing work on these two construction project.

7 14. As the COVID-19 related restrictions mounted, the Department was engaged
 8 with both of the contractors at ESH and WSH. Both projects were included in the Governor's
 9 list of essential projects so that the contractors would be lawfully allowed to continue work on
 10 these projects, if able. But even with the projects designation as essential, the realities of
 11 dealing with a widespread pandemic brought work to a crawl at WSH, and a full stop at ESH.
 12 These delays were created by the unavailability of workforce, interruptions in supply chain
 13 deliveries, and limited availability of subcontractors. In some instances, such as the installation
 14 of specialty door hardware at ESH, the contractors had been scheduled to travel to the project
 15 from out of state and that travel could not occur under the various restrictions in place. At ESH,
 16 on March 30, 2020, the contractor invoked the force majeure clause (citing the "pandemic"
 17 term) to suspend work. At WSH, work has continued, but at a greatly reduced rate and with a
 18 greatly reduced workforce.

19 15. During this period of unavoidable impact on both projects, DSHS has been
 20 working to identify all of the efficiencies possible to keep the timeline short, but there are still
 21 many delays that are beyond the control of the Department and the contractors working on the
 22 projects. The Department continues to work with the contractors to institute appropriate health
 23 and safety measures for those who can continue working. The Department has worked with
 24 the contractor at WSH in order to accommodate requests, such as instituting precautions that
 25 keep contractor personnel further isolated from WSH employees, and these efforts have
 26 allowed an increase in the contractor workforce. At ESH, the contractor has worked with ESH

1 to institute additional safety and screening precautions, and as of April 24, 2020, some
 2 construction has resumed. Some work, such as door installation and flushing of heating lines,
 3 has been accelerated at ESH. This acceleration was possible because the contractor and
 4 equipment were available, and because of the temporary shutdown of work, the jobsite was
 5 unoccupied. The Department has also been in contact with local authorities concerning
 6 necessary inspections to ensure that arrangements can be made to accomplish the necessary
 7 inspections. At ESH, one of the ward renovations is currently substantially more complete than
 8 the other ward, and the Department will be pursuing strategies that may allow that ward to
 9 open before the other, instead of opening both wards at the same time as originally planned.
 10 But as long as the widespread disruptions created by the COVID-19 pandemic continue, so
 11 will the disruptions in construction at ESH and WSH.

12 16. As of this filing, these restrictions are currently in effect, and will be for an
 13 unknown period of time. Because the period of time that restrictions will be in effect is
 14 unknown, the time necessary for completion of the projects also remains unknown. The full
 15 impact of these disruptions will not be known until the future becomes more certain, and
 16 restrictions related to the state of emergency are lifted or eased. It is also likely that disruptions
 17 in the supply chain may continue to impact the availability of equipment and material
 18 necessary to complete construction—even after restrictions on the workforce are lifted. Even
 19 if limited work is underway at both ESH and WSH, each project has steps that must be
 20 completed in a certain sequence. For example, electrical and plumbing work inside walls must
 21 be completed before the walls can be closed up and finished. The unavailability of equipment
 22 or workforce for any particular step may delay future steps that must follow in sequence.
 23 Under these conditions, specific time delays are unknown at this point, and cannot be provided
 24 until more information becomes available.

25 I declare under penalty of perjury under the laws of the United States and the State of
 26 Washington that the foregoing is true and correct to the best of my knowledge.

Dated this 5th day of May 2020, at Olympia, Washington.


JUDY FITZGERALD
Chief Financial Officer
Department of Social and Health Services

CERTIFICATE OF SERVICE

I, *Christy Townsend*, state and declare as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein. I hereby certify that on this 6th day of May 2020, I electronically filed with foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

David Carlson: davidc@dr-wa.org

Kimberly Mosolf: kimberlym@dr-wa.org

Elizabeth Leonard: bethl@dr-wa.org

Christopher Carney: Christopher.Carney@CGILaw.com

Sean Gillespie: Sean.Gillespie@CGILaw.com

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 6th day of May 2020, at McCleary, Washington.

Chen Tsong

CHRISTINE TOWNSEND
Legal Assistant